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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,386	02/20/2002	Clifford F. Sharp	58875/P001CP1CP1/10111610	5842

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EXAMINER	
JUNG, DAVID YIUK	
ART UNIT	**PAPER NUMBER**
2134	

MAIL DATE	DELIVERY MODE
07/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/078,386	SHARP ET AL.	
	Examiner	Art Unit	
	David Y. Jung	2134	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) 12-21 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) 12-21 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date 2002,2003,2005;2006;2007.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

CLAIMS PRESENTED

Claims 12-21 are presented.

All other claims are cancelled.

Response to Arguments

Applicant is thanked for the helpful presentation of Applicant's arguments. This has permitted a full and careful consideration. Applicant's arguments filed have been fully considered but they are not persuasive.

Applicant argued that Phrack does not teach "temporarily storing certain subsequently received packets upon attainment of packet flow volume into a system reaching a certain level." See page 9 of Applicant's arguments filed in response to the rejections. This argument has led to a yet another careful study of Phrack. This is because the Office assumed Phrack to be discussing a typical situation of IP spoofing. In any normal defense against IP spoofing, such as discussed at page 8 of Phrack, packet filtering occurs. See page 8 of Phrack. In such situation, the router (as discussed by Phrack) is used to send away packets. This is done after some examination of origin of the packets. Thus, during such examination, "temporarily storing certain subsequently received packets upon attainment of packet flow volume into a system reaching a certain level" must occur. How can it not? How else is anything done otherwise? Only a temporary storage would put the packets in a situation where it can be examined without permitting intrusion. Furthermore, as IP

spoofing is usually part of a denial of service attack, some threshold handling must occur as part of the defense. Thus, the system must look for "reaching a certain level." In conclusion, Phrack has been re-studied and has been confirmed as not materially different from the usual prior art.

For these reasons, the rejections over Phrack are sustained. Furthermore, as Phrack is cited as the usual prior art, Applicant is particularly requested to explain why the claimed invention is different from the usual prior art as assumed by those of ordinary skill in the art. Applicant has cited MPEP 2131 regarding anticipation. Underlying any rejection of anticipation is inherency. Otherwise, the only rejection permitted by anticipation would require ipsissimis verbis (exact vertabitim recitation) – which Applicant would recognize as absurdity. On this matter of inherency, the author of Phrack has (somewhat irreverently) noted that the Phrack article "assumes that you are not a moron." Thus, again, Applicant is respectfully requested to explain the actual (and not mere cosmetic) difference between the claimed invention and the prior art.

CLAIM REJECTIONS

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9-10, 12-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Phrack (cited by Applicant, Phrack Magazine Volume Seven, Issue Forty-Eight, File 14 of 18).

Regarding claim 9, Phrack teaches: A data network monitoring system comprising: at least one data sniffer; a temporary storage device; a processor for determining spoofing with respect to data passing through said system; and said processor further operative for diverting to said temporary storage device selected data entering said system, (page 8, i.e., router to help out) said selected data controlled in part by information obtained from said data sniffer and from a determination of spoofing (page 8, i.e., require authentication).

Regarding claims 10, 12-18, see pages 8-9. These pages show that the details of keeping track of the network as in these claims are inherent to the situation noted in pages 8-9.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phrack.

Phrack teaches as noted in the previous sections.

Phrack does not teach the displaying as in these claims.

Nevertheless, it would have been obvious to have such displaying for the motivation of easier control by the system handling person.

Thus, it would have been obvious to those of ordinary skill in the art to modify Phrack so as to teach the claimed inventions.

Conclusion

The art made of record and not relied upon is considered pertinent to applicant's disclosure. The art disclosed general background.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Points of Contact

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

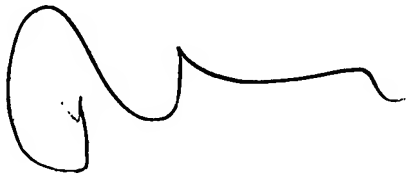
(571) 273-8300, (for formal communications intended for entry)

Or:

(571) 273-3836 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Jung whose telephone number is (571) 272-3836 or Kambiz Zand whose telephone number is (272) 272-3811.

David Jung



Patent Examiner

7/7/07